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RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JULY -9 2008

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

VALERIA G.,

Appellant,

v.

ARIZONA DEPARTMENT OF  
ECONOMIC SECURITY and  
MARIA V.,

Appellees.

2 CA-JV 2007-0083  
DEPARTMENT B

MEMORANDUM DECISION  
Not for Publication  
Rule 28, Rules of Civil  
Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17212200

Honorable Charles S. Sabalos, Judge

AFFIRMED

Jacqueline Rohr

Tucson  
Attorney for Appellant

Terry Goddard, Arizona Attorney General  
By Claudia Acosta Collings

Tucson  
Attorneys for Appellee Arizona  
Department of Economic Security

ESPINOSA, Judge.

¶1 Valeria G. appeals the juvenile court's order terminating her parental rights to her daughter, Maria V., born in October 2004, shortly before Valeria's fifteenth birthday. Valeria maintains the Arizona Department of Economic Security (ADES) failed to make

reasonable and diligent efforts to provide her with services designed to preserve her relationship with Maria, who, at the time of the termination hearing, was receiving speech, occupational, and physical therapies to address developmental delays. She further contends that because appropriate services were not provided, the court lacked sufficient evidence to find grounds for termination, arguing she “deserved more” than the court’s consideration of “a two and one-half year old evaluation, coupled with mere speculation that [she] could not work with Maria on her special-needs training and therapies.” For similar reasons, Valeria argues the evidence was insufficient to support the court’s finding that termination would be in Maria’s best interests.

¶2 The juvenile court found termination was warranted on all three grounds ADES had alleged in its motion to terminate Valeria’s parental rights, concluding that despite diligent efforts by ADES to provide appropriate unification services, Valeria had a mental deficiency or mental illness that rendered her unable to parent Maria and was likely to continue for a prolonged, indeterminate period, *see* A.R.S. § 8-533(B)(3); she had substantially neglected or willfully refused to remedy the circumstances that prevented Maria’s return to her custody, after Maria had spent more than two years in court-ordered foster care, *see* § 8-533(B)(8)(a); and in any event, she had failed to remedy those circumstances and was unlikely to be able to effectively parent Maria in the near future, *see* § 8-533(B)(8)(b).

¶3 As reflected in the juvenile court’s termination order, the critical issue in this case was not whether Valeria could effectively parent a child, but whether Valeria could effectively parent a child with Maria’s special needs. In addition to other challenges Valeria

might have been expected to face as a teenaged mother, Valeria was relatively illiterate compared to her peers. Although her case plan required her to attend school and work toward a high school or general equivalency diploma, she had not attended regularly, and her reading comprehension score before the termination hearing was below third-grade level. Whether a mental deficiency rendered Valeria unable to effectively parent Maria presented a more difficult question. Two psychological evaluations, one performed at ADES's request in January 2005 just after this dependency was initiated and another at the request of Valeria's counsel in August 2007, two months before the termination hearing, reported dramatically different findings about Valeria's intelligence quotient (IQ) and its likely effect on her parenting abilities.

¶4 As addressed below, this case presents unusually close questions about the sufficiency of the evidence to support the juvenile court's findings of grounds for termination. We therefore restate the factual and procedural background in detail and conclude that we cannot say as a matter of law, based on the arguments raised on appeal, that no reasonable person could find clear and convincing evidence to support termination of Valeria's parental rights on at least one of the grounds alleged. *See, e.g., Stevenson v. Stevenson*, 132 Ariz. 44, 46, 643 P.2d 1014, 1016 (1982) (appellate court "must affirm if any reasonable construction of the evidence justifies the decision"). We therefore affirm the court's termination order.

### **Maria's Special Needs**

¶5 Maria was first assessed with developmental delays in February 2006, while she was in foster care, after her foster mother consulted her pediatrician "about some

attachment issues” and because Maria’s communication seemed to be delayed. She was referred to the Arizona Early Intervention Program (AzEIP) in ADES’s Division of Developmental Disabilities (DDD) for services. According to a speech-language evaluation in April 2006, Maria had mildly to moderately delayed speech and language skills.

¶6 During Maria’s first two sessions with an AzEIP speech therapist in the spring of 2006, her foster parents were instructed in ways to support Maria’s development of communications skills, including the use of sign language. After these initial sessions, however, Maria was returned to Valeria’s care in June 2006, requiring a transfer of Maria’s DDD/AzEIP case file and services to the DDD office serving Valeria’s geographic area. Maria was then removed from Valeria’s care in August 2006 and returned to the same foster home, requiring another file transfer between DDD offices. As a result of delays associated with those transfers, Maria did not receive speech therapy while she was in Valeria’s care, and her therapy did not resume until 2007.

¶7 In January 2007, speech language pathologist Mary Lou Frangomeni-Nuttall observed that Maria had a greater-than-fifty-percent delay in expressive communication. In February, developmental pediatrician Sydney Rice described Maria as having “moderate global developmental delays with no significant medical special needs,” including a forty-percent delay in language and problem-solving skills, and referred her for evaluation of her motor skills. Occupational therapist Jeanne Rodriguez found Maria was “demonstrating mild delays” in her fine motor skills in April 2007; in July, physical therapist Nanette Burnett diagnosed Maria as having a two- to six-month delay in her gross motor skills and impaired core strength. Frangomeni-Nuttall, Rodriguez, and Burnett each provided therapy

for Maria from the time of their respective evaluations until the termination hearing in October 2007. AzEIP also assigned a developmental specialist to work with Maria on all areas of development. All services were provided in Maria's foster home.

¶8 By the time of the termination hearing in October 2007, when Maria was almost three years old, Frangomeni-Nuttall described Maria's speech development as "remarkably improved" and estimated her communications delays had been reduced to about twenty-five or thirty percent when compared with her peers. Rodriguez and Burnett also reported that for most activities, Maria's motor skills were approaching age-appropriate levels. Despite Maria's improvements, Frangomeni-Nuttall opined she would likely require an additional three to five years of speech therapy to acquire all speech sounds, and Burnett stated that to gain and keep core strength, Maria would need continuous daily exercise in the form of "very active play." All three therapists commended the foster parents' commitment to improving Maria's development skills and the involvement of the entire foster family in those efforts.

¶9 Frangomeni-Nuttall and Burnett explained their services to Maria would end within the month because AzEIP services are only provided to children under the age of three, and both discussed a parent's role after the child's third birthday, when services for developmental delays must be obtained through the local school district. Frangomeni-Nuttall testified, "[P]arents remain the greatest influence on a child's communication development" and must often serve as advocates "for what the school district needs to provide their child," adding, "It is a system that consistently requires advocacy." Burnett stated that most school district programs do not provide "one-on-one therapy," and a parent

plays a crucial role in providing the proper play environment and guidance. When asked about Maria's particular needs, Burnett said her parent should be able to provide "persistence [and] a lot of structure."

### **Summary of the Dependency Proceeding**

¶10 In December 2004, before Maria was two months old, Valeria telephoned Child Protective Services (CPS) and said her stepfather, a convicted sex offender, was staying in the family home and she was concerned about Maria's safety. Later that month, Valeria told CPS her mother and stepfather had been jailed on domestic violence charges. CPS took Valeria and Maria into protective custody on December 27, 2004, and filed two dependency petitions, one to declare Valeria dependent as to her mother, Araceli J., and another to declare Maria dependent as to Valeria and Joe V., Maria's father.<sup>1</sup>

¶11 On January 25, 2005, clinical psychologist Philip Balch conducted a psychological evaluation of Valeria and found her to have a verbal IQ of 54, in the range of mild to moderate retardation, and noted this result was consistent with her academic achievement scores.<sup>2</sup> Balch remarked that Valeria "attend[ed] well to the baby" during the evaluation but stated her "apparent memory deficits, and generally low verbal intelligence, raise some concerns relative to her ability to parent her daughter, particularly as the daughter

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<sup>1</sup>Joe V.'s parental rights were terminated on August 7, 2007. He did not appeal that decision.

<sup>2</sup>Balch had measured Valeria's reading comprehension at below second-grade level and her calculation skills at third-grade level. Balch's other diagnostic impressions included "Parent-Child Relational Problem" (between Valeria and her mother), "Depressive Disorder [Not Otherwise Specified]," "Consider Dysthymic Disorder," "Academic Deficits," and "Recent Mother."

gets older, and there are more complex decisions which need to be made, and judgment calls which need to be made.” Balch further opined Valeria might be able to parent Maria, “at least in the short run, with appropriate adult supervision and back-up.” He recommended that Valeria participate in parent education and therapy “geared to her currently found verbal abilities” and “measured intellectual abilities” and suggested that Valeria be referred for developmental disability and vocational rehabilitation services and a neuropsychological evaluation.

¶12 Valeria and Maria were initially placed together in a group home, and the permanency goal was for Maria to remain with Valeria.<sup>3</sup> But on June 24, 2005, Valeria left the group home with Maria, failing to take inhalers that had been prescribed for Maria’s asthma symptoms, and did not return.<sup>4</sup> South Tucson police officers located them the following morning; Maria was placed in foster care, and Valeria remained in a group home. Valeria later admitted a charge of child endangerment, was adjudicated a delinquent minor, and was placed on probation. CPS case manager Robert Salgado reported that during the next six months, Valeria continued to work on her case plan by attending school regularly and participating in visitation and all services offered by CPS. By January 2006, she had completed a group parenting class, a “hands-on parenting education group,” and “parenting

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<sup>3</sup>Maria was adjudicated dependent as to Valeria in March 2005 after Valeria admitted, as alleged in an amended dependency petition, that CPS had received reports about the problems in Araceli’s home and that Valeria, herself a child in CPS custody and the subject of a dependency proceeding, was unable to independently care for Maria. The petition had been amended to include Valeria’s report that her stepfather was no longer living in Araceli’s home.

<sup>4</sup>The inhalers had been provided after Maria’s respiratory problems resulted in an overnight hospital stay on May 26, 2005.

modules” offered by her assigned parent aide and had “graduated from [individual] therapy.” However, Salgado also reported recent evidence of Valeria’s poor judgment in her personal life and opined, “Valeria has not yet proved that she is capable of parenting a child, due in large part to her immaturity and low verbal intelligence.”<sup>5</sup> As a permanent placement plan, Salgado recommended Maria’s placement with Valeria in Araceli’s home, and Valeria was returned to Araceli’s physical custody In January 2006.

¶13 Maria’s permanency hearing, commenced in December 2005, was continued over the next sixteen months, with postponements largely the result of stipulations between the parties. On February 2, 2006, the juvenile court adopted ADES’s recommendation that Valeria be given additional time to participate in case plan tasks and services. At the following dependency review hearing in May 2006, the court approved ADES’s recommendation that Maria be returned to Valeria’s physical custody. Salgado had expressed concern about Valeria’s failure to attend school regularly after she had returned to Araceli’s home that January and her “history of poor decision-making and immaturity.” But he nevertheless reported Valeria had demonstrated appropriate parenting skills and interacted well with Maria during increased visitation. As part of the placement transition plan, Maria’s speech therapy services, which had recently begun in her foster home, were to be transferred to her new placement with Valeria.

¶14 Maria was placed with Valeria in Araceli’s home on June 9, 2006. On August 1, however, Araceli informed Salgado the family had been evicted and was staying in a motel

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<sup>5</sup>Specifically, Salgado related reports that Valeria had been seen with Maria’s father, although contact between the two had been prohibited, and had been seen driving, even though she did not have a driver’s license.



while they looked for permanent housing. After consulting with his supervisor, Salgado removed Maria from Valeria's care the following day. Maria was placed with the same foster parents who had previously cared for her and remained with them until the termination hearing in October 2007.

¶15 After Maria was returned to foster care in early August 2006, Valeria was provided supervised visitation. Salgado reported that Maria became uncomfortable when separated from her foster mother, and so he initially asked the foster mother to remain during Valeria's visitation. According to Salgado, Maria had become extremely distraught during two of the September visits; on the second occasion, Salgado said he had attempted to supervise a visit with Valeria alone, but Maria was so upset that she became "physically ill" when her foster mother left, and Salgado brought the foster mother back in and ended the visit. After that visit, however, the foster mother no longer participated in Valeria's visitation, and although Maria continued to be distressed when her foster mother left, she appeared to calm down after the visit was underway.

¶16 At Maria's September 2006 dependency review hearing and her November 2006 placement review and permanency hearing, Salgado recommended that the permanent case plan goal be changed to severance and adoption, but the juvenile court instead reaffirmed the goal of family reunification and found Valeria to be in substantial compliance with her case plan. Although the court found ADES to be making reasonable efforts to eliminate the need for out-of-home placement at these hearings, it also suggested that ADES consider bonding therapy for Valeria and Maria. The court continued Maria's permanency hearing until January 24, 2007.

¶17 Beginning December 5, 2006, in lieu of visitation, Valeria and Maria participated in weekly bonding and play therapy with La Frontera therapist Rachel Halper. After the first month of sessions, Halper reported the therapy had gone well, with Maria appearing to be comfortable with Valeria and less anxious about separation from her foster mother, and recommended that the therapy sessions continue. Also in December 2006, Valeria gave birth to her second child, Christopher. ADES filed a dependency petition as to Christopher on December 27, 2006, but did not remove him from Valeria's physical custody.

¶18 Salgado had again recommended the case plan goal be changed to severance and adoption in his January 2007 permanency hearing report, but at the hearing on January 24, ADES asked the court to postpone consideration of permanency so that ADES could provide Valeria and Maria with additional bonding therapy sessions and a bonding and attachment assessment could be prepared. The court continued the permanency hearing, affirming Maria's placement and finding ADES had made reasonable efforts to finalize the plan of reunification. At the end of January, however, Salgado declined Valeria's request to allow her to participate in Maria's speech therapy sessions, which were about to resume in Maria's foster home, because he was concerned her presence might upset Maria.

¶19 On April 26, 2007, the juvenile court granted ADES's motion to dismiss the dependency petition as to Valeria's son Christopher, finding that grounds for the dependency did not exist. On May 2, the court concluded Maria's permanency hearing, finding that, because of her developmental delays, she needed extensive remedial assistance from her primary caretaker and returning her to Valeria's care would present a substantial

risk of harm to her physical, mental, and emotional health and safety, based on Valeria's mental deficits and history of poor judgment. *See* A.R.S. § 8-861 (permanency determination; child's reunification with parent required if court finds no substantial risk of harm would result). The court approved a permanent plan of severance and adoption, found ADES had made reasonable efforts to reunify the family and relieved ADES of any obligation to provide further services, and directed ADES to file a motion to terminate Valeria's parental rights.<sup>6</sup> A hearing on ADES's termination motion was subsequently scheduled for October.

¶20 In August 2007, clinical psychologist Michael German evaluated Valeria's intellectual abilities at the request of Valeria's counsel. German found Valeria to have a verbal IQ of 80, a performance IQ of 87, and a full-scale IQ of 82, placing her in the "low average range of ability." In his testimony at the termination hearing, German cautioned that he could not render an opinion about other psychological factors that might affect Valeria's parenting but opined that, based on her IQ, she was not mentally retarded and was intellectually capable of effectively parenting a child like Maria with moderate special needs.

¶21 When German was asked about the difference between the IQ scores he found and those reported by Balch, he stated, "[A] person can't score higher than they're capable of," but "can score lower," and suggested Valeria may have lacked motivation or confidence or, noting Balch's impression that Valeria suffered from a depressive disorder at the time,

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<sup>6</sup>The May 2, 2006 permanency hearing transcript was not made a part of the record on appeal but was previously filed in support of Valeria's petition for special action challenging the juvenile court's order after that hearing. We declined to accept jurisdiction of the special action, *Valeria G. v. ADES*, No. 2 CA-SA 2007-0062 (order filed Aug. 7, 2007), but take judicial notice of the May 2, 2006 transcript.

may have been affected by depression on the day she tested with Balch in 2005. When the juvenile court asked Balch whether he had “any reason to believe that [Valeria’s] verbal intelligence score would be higher now” than in 2005, Balch opined that Valeria may have suffered from some academic disadvantages in the past and that, “if she has been exposed to schooling, [if] she has been exposed to a more stable environment, [and because] she clearly has gotten older,” these factors could account for the difference in her IQ scores between January 2005 and August 2007.

¶22 After a three-day termination hearing, the juvenile court granted ADES’s motion on all grounds alleged. The court also found termination of Valeria’s parental rights was in Maria’s best interests.

### **Valeria’s Appeal**

¶23 Valeria argues ADES failed to provide her with appropriate reunification services and that the evidence was insufficient to establish grounds for termination, citing the court’s reliance on Balch’s 2005 evaluation and “mere speculation” that Valeria could not provide the supportive parenting Maria required. She contends “it is impossible to determine” her abilities as Maria’s parent, currently or in the near future, *see* § 8-533 (B)(8)(b), because ADES did not provide her with services “that would have enabled her to show that she could meet her daughter’s needs.”<sup>7</sup> Specifically, Valeria maintains that

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<sup>7</sup>ADES argues Valeria has conceded the accuracy of the juvenile court’s findings that Valeria was unable to effectively parent Maria at the time of termination—causing Maria to remain in court-ordered, out-of-home placement—and was likely to remain unable to parent her in the near future, *see* § 8-533(B)(3) and (B)(8)(a), (b), because she “does not formally dispute” those findings. We agree Valeria’s briefs lack clarity and fail to fully articulate the bases for her appeal. In this instance, however, it appears Valeria’s allegations

ADES failed to make a diligent effort to reunify her with Maria because it refused to allow her to participate in Maria's therapy services between January and May 2007.

¶24 In order to terminate parental rights pursuant to A.R.S. § 8-863, ADES must establish each of the required elements of a ground for termination set forth in § 8-533(B) by clear and convincing evidence, *Mary Ellen C. v. Ariz. Dep't Econ. Sec.*, 193 Ariz. 185, ¶ 25, 971 P.2d 1046, 1051 (App. 1999), and must establish by a preponderance of the evidence that termination is in the child's best interests, *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). This court will not reverse a juvenile court's termination order unless the court's factual findings are clearly erroneous, that is, unless there is no reasonable evidence to support them. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291 (App. 1998). We will not reweigh the evidence, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002); when a court's finding must be supported by clear and convincing evidence, we will not disturb it unless we “‘must say as a matter of law that no one could reasonably find the evidence to be clear and convincing.’” *Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955), *quoting Paulsen v. Coombs*, 253 P.2d 621, 624 (Utah 1953). We will affirm a termination order if the evidence supports any one of the statutory grounds alleged and the court's finding that

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of inadequate reunification services and the insufficiency of evidence to establish her inadequacy to parent Maria present overlapping issues. Essentially, Valeria argues ADES presented no evidence that she was unable to acquire the parenting skills needed to complement Maria's therapies and, because ADES had not tested her abilities by allowing her to participate in Maria's therapies, it could not prove her inability to parent Maria. Valeria thus challenges, albeit inartfully, the court's findings of her present and future inadequacy to parent Maria, as well as its finding that ADES provided appropriate reunification services.

termination is in a child's best interests. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶¶ 11-12, 27, 995 P.2d 682, 684-85, 687 (2000).

### **Appropriate Reunification Services**

¶25 As the agency responsible for Maria's care, ADES had statutory and constitutional obligations to make reasonable reunification efforts before Valeria's parental rights could be terminated on the grounds of mental illness or mental deficiency or Maria's time in out-of-home care. *See Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, ¶ 37, 152 P.3d 1209, 1216 (App. 2007); *see also Mary Ellen C.*, 193 Ariz. 185, ¶ 32, 971 P.2d at 1053 (§ 8-533(B)(3) "mental illness or mental deficiency" ground). ADES is not required to "provide 'every conceivable service'" or to "undertake rehabilitative measures that are futile," but it must ordinarily "undertake measures with a reasonable prospect of success." *Mary Ellen C.*, 193 Ariz. 185, ¶¶ 34, 37, 971 P.2d at 1053, *quoting In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994).

¶26 Valeria argues ADES failed to provide appropriate reunification services because it did not allow her to participate in Maria's therapy services and offered "no authority to show that [Valeria] could not work with and learn from [Maria's] 'special needs' providers" from January to May 2007, when Maria's speech therapy services began in earnest.<sup>8</sup> But there is no evidence ADES denied Valeria's request to attend the therapy

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<sup>8</sup>Valeria refers to other reunification services ADES did not provide in her statement of facts but fails to argue their relevance. For example, she reports ADES failed to conduct a "promised" bonding assessment prior to the May 2007 permanency hearing but does not argue why this service was required. Similarly, Valeria notes ADES did not refer her for developmental disability or vocational rehabilitation services as Balch had recommended but does not argue the juvenile court erred in finding her ineligible for such services. "Merely

sessions on the ground it would have been futile to instruct Valeria on ways to attend to Maria's special needs. Instead, Salgado testified he had denied Valeria's request because, in his opinion, Valeria's participation would have been contrary to Maria's best interests.

¶27 Burnett testified the focus of her therapy is "giving the parent the information and tools to work with" a developmentally delayed child and agreed Valeria "might have learned something" about Maria's needs if she had been allowed to attend the physical therapy sessions. Frangomeni-Nuttall stated she thought it "would always be appropriate" to incorporate a biological mother in speech therapy when a case plan calls for reunification, but it was not her decision to make. However, DDD support coordinator Christine Walker opined, "[I]t wouldn't necessarily be appropriate for the birth parent to participate in therapy sessions that happen in the child's natural environment, which is typically at the foster home."

¶28 Salgado testified he had denied Valeria's request, despite Halper's reports of "a positive progression of bonding" between Valeria and Maria, because Maria had continued to have emotional reactions to any separation from her foster mother even when her foster parents would attempt to leave her in their church's nursery during services.<sup>9</sup> And, although permitting Valeria to participate in Maria's speech therapy at the foster parents' home would not have required separation from her foster mother, Salgado was still

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mentioning an argument is not enough. . . . 'Failure to argue a claim usually constitutes abandonment and waiver of that claim.'" *State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9, *quoting State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989). We therefore do not consider these issues in our analysis.

<sup>9</sup>Salgado had reported that during one such instance at the church nursery Maria had been so upset that she had become "physically ill."

concerned that Valeria's presence in the home would trigger an emotional reaction from Maria. Salgado testified Maria sometimes "had a lot of emotional distress in [Valeria's] presence . . . [and] it did not seem that she would fully benefit from the services" if Valeria attended.

¶29 Although it is somewhat troubling that Salgado made this decision unilaterally, without consulting Maria's speech therapist, Halper, or Maria's foster mother, Salgado testified he had "been involved extensively" in Valeria's visitations and had been assigned to Maria's case for over a year by January 2007. The juvenile court reasonably could have relied on Salgado's opinion that Valeria's participation in Maria's speech therapy was not in the child's best interests and found this to be a proper basis for ADES's denial of Valeria's request. *Cf. In re Maricopa County Juv. Action No. JD-5312*, 178 Ariz. 372, 375-76, 873 P.2d 710, 713-14 (App. 1994) (court did not abuse discretion in terminating visitation due to adverse affects on child). The record supports the court's finding that over a twenty-six-month period, Valeria "was provided with child and family team meetings, parenting classes, enrollment in the healthy family program, psychological evaluation, individual therapy through La Frontera, parent aide services and supervised visitation." We cannot agree with Valeria that ADES's denial of her request to participate in Maria's therapies from January to May 2007 renders these efforts inadequate.

### **Insufficient Evidence**

¶30 Valeria also argues that because ADES did not permit her to participate in Maria's therapy services to learn the skills required to address Maria's special needs, it could not establish either her present inability to effectively parent Maria or her likely inability,



if training were provided, to properly parent Maria “in the near future.” *See* § 8-533(B)(8)(b). She cites her parenting of Christopher, and the court’s dismissal of the dependency petition as to him, as evidence that she is capable of parenting a child without special needs and argues that visitation supervisors provided favorable reports and identified “[n]o specific limitations” in Valeria’s “ability to parent [Maria] at the visits.” She also challenges the juvenile court’s reliance on Balch’s 2005 psychological evaluation in light of German’s contradictory findings in 2007.

¶31 Because we find sufficient evidence supported the juvenile court’s conclusion that ADES had established grounds for termination pursuant to § 8-533(B)(8)(b), we need not consider whether termination of Valeria’s parental rights was warranted under § 8-533(B)(3) or (B)(8)(a). *See Michael J.*, 196 Ariz. 246, ¶ 27, 995 P.2d at 687.

¶32 Under § 8-533(B)(8)(b), the juvenile court was required to find Valeria had been unable to remedy the circumstances causing Maria to be in an out-of-home placement for fifteen months or more and, further, that there was a substantial likelihood she would not be able to effectively parent Maria in the near future. Division One of this court has recently construed § 8-533(B)(8) “to mean those circumstances existing at the time of the severance’ that prevent a parent from being able to appropriately provide for his or her children.” *Marina P.*, 214 Ariz. 326, ¶ 22, 152 P.3d at 1213 (§ 8-533(B)(8)(a) grounds), *quoting In re Maricopa County Juv. Action No. JS-8441*, 175 Ariz. 463, 468, 857 P.2d 1317, 1322 (App. 1993).

¶33 In its discussion of § 8-533(B)(8) grounds, the juvenile court did not specifically identify the circumstances Valeria had failed to remedy. Elsewhere in its order, however, the court made the following relevant findings:

Maria requires intensive therapeutic interaction with a parent who is able to and will consistently devote significant time and energy to ongoing and organized efforts to achieve developmental rehabilitation. The court finds that [Valeria's] low intellectual functioning and depression renders her inadequate in providing appropriate therapeutic interaction with the child and in comprehending and effectively pursuing necessary rehabilitative services which may be available in the community.

We presume this statement reflects the court's finding of circumstances that prevented Valeria from adequately parenting Maria at the time of termination. *See Marina P.*, 214 Ariz. 326, ¶¶ 23-24, 152 P.3d at 1213 (§ 8-533(B)(8) "circumstances" not "directly identified" but determined from other findings).

¶34 As an initial matter, we are not persuaded by Valeria's argument that her ability to parent Christopher adequately was conclusive evidence that, with training, she would also be able to effectively parent Maria. Beyond the training required to assist Maria's therapists, the two children's needs are not the same, and Valeria does not dispute the court's finding that Maria requires a parent who is especially vigilant in attending to her developmental delays. Moreover, the court properly could have considered whether Valeria, who was able to meet her parenting obligations to Christopher as a single child in the home, would also be able to "devote significant time and energy" to addressing Maria's

special needs if she were caring for both children.<sup>10</sup> See *In re Pima County Juv. Action No. S-2460*, 162 Ariz. 156, 158-59, 781 P.2d 634, 636-37 (App. 1989) (substantial evidence mother was “barely capable of parenting five children presently in her care”; reunification with other children not dispositive of termination of parental rights to children with development disabilities and emotional handicaps).

¶35 We agree with Valeria, on the other hand, that the juvenile court could not properly rely on Balch’s 2005 findings, because Balch could offer no opinion about Valeria’s current mental health, intellectual capacity, or ability to parent at the time of the termination hearing.<sup>11</sup> Cf. *In re Maricopa County Juv. Action No. JS-378*, 21 Ariz. App. 202, 206, 517 P.2d 1095, 1099 (1974) (“complete lack of evidence” for termination pursuant to § 8-533(B)(3) where doctors offered no opinion about mother’s mental state at time of termination; court could not infer prior condition had continued to exist). This does not render erroneous the court’s finding of grounds pursuant to § 8-533(B)(8)(b), however, because we conclude other reasonable evidence in the record supports those findings.

¶36 We note that, when German opined that Valeria was intellectually capable of parenting a child with moderate special needs, he carefully limited his comments to Valeria’s intellectual ability, stating, for example:

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<sup>10</sup>Valeria acknowledged at the hearing that caring for Christopher was a “full-time job.”

<sup>11</sup>Balch testified at the termination hearing that he had no reason to dispute German’s 2007 findings or classification of Valeria’s IQ; that it was “fair to say” that German’s evaluation, because more recent, was more accurate than his own 2005 evaluation, which he agreed was like “a snapshot in time”; and that, at the time of the termination hearing, he could offer no judgment about whether Valeria could adequately parent Maria.

[I]f this person has stability in her life, which I don't know, if she is motivated and mature and responsible, her level of intellectual lowness, low average, would not prohibit her from being able to [parent a child with moderate special needs].

The juvenile court, in addressing § 8-533(B)(8) grounds, was concerned with more than Valeria's low average IQ. Indeed, the court implicitly considered her lack of motivation, maturity, and responsibility when it found Valeria "ha[d] failed to comply with the court-ordered case plan . . . by neglecting to complete those tasks this court finds most critical in ameliorating her parental inadequacies."<sup>12</sup>

¶37 Although a failure to comply with case plan tasks is not, in itself, a ground for terminating a parent's rights, the juvenile court is required to "consider the availability of reunification services to the parent and the participation of the parent in the services" when determining whether grounds for termination exist under § 8-533(B)(8). § 8-533(D). The court specifically noted Valeria's failure to attend school, her failure to complete individual therapy, her failure to attend medical appointments to verify her appropriate use of antidepressants, and her discontinuation of antidepressants without medical advice. Under Valeria's narrow phrasing of the issue in this case—whether she could "work with Maria on her special-needs training and therapies"—her noncompliance with these case plan tasks might not appear significant. But the court found Maria requires "intensive" interaction with a parent who "will consistently devote significant time and energy to ongoing and organized

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<sup>12</sup>Similarly, although there was no medical evidence that Valeria was clinically depressed at the time of termination, Valeria testified she did not attend school regularly because she felt depressed. While not sufficient as a medical diagnosis, this testimony supported the court's finding, for the purpose of § 8-533(B)(8)(b) grounds, that Valeria's feelings of depression would impair her ability to aggressively pursue services for Maria.

efforts” to address her developmental delays, and Valeria’s failure to follow through with her own education, therapy, and medication monitoring supports the court’s finding that she would also be unable to “comprehend[] and effectively pursue[]” the resources Maria needs, as well as its finding that Valeria had failed to remedy this circumstance. *See* § 8-533(B)(8)(b). We recognize that Valeria made appreciable efforts to comply with those aspects of her case plan that directly targeted her parenting skills. She did not comply, however, with case plan tasks designed to further her own personal growth, a factor the court reasonably could find highly important to sustaining Maria’s development in light of her special needs.<sup>13</sup>

¶38 Section 8-533(B)(8)(b) also requires a finding of a “substantial likelihood” that Valeria will be unable to effectively parent Maria “in the near future.” The court’s finding that Valeria was unable to provide the consistent, ongoing, organized efforts Maria required was based on the thirty-three-month history of the dependency proceeding. The court reasonably could have concluded that nothing Valeria might do in the “near future” could establish the consistency of purpose and special care Maria required. We thus find

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<sup>13</sup>Failing to attend school regularly may have directly affected Valeria’s ability to understand Maria’s needs and pursue appropriate services. Balch had expressed concern about Valeria’s “relative illiteracy” in 2005 and had believed “the first order of business” for her “[was] to get as much education as possible.” German had also noted Valeria’s “literacy handicap” and opined she would likely “be stressed by the reading demands for most activities.” It was not unreasonable for the court to infer that helping Maria develop communication skills and vigilantly advocating for needed services would have required Valeria’s commitment to improving her own abilities.

sufficient evidence to support the court’s termination of Valeria’s parental rights pursuant to § 8-533(B)(8)(b).

### **Best Interests**

¶39 Finally, Valeria argues she and Maria “were not afforded the proper services to support their relationship” and, as a result, the juvenile court lacked sufficient information to determine Maria’s best interests. She also argues the court failed to consider “that there was no harm for Maria in continuing her relationship with [Valeria] and that Maria has a vested interest in having her sibling[, Christopher,] be a full and complete part of her life.”

¶40 Valeria’s challenge to the juvenile court’s best interests finding fails to address the relevant inquiry, which is whether reasonable evidence supported the court’s finding, by a preponderance of the evidence, that Maria would benefit from the termination of the relationship or be harmed by its continuation. *See In re Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 6, 804 P.2d 730, 735 (1990); *see also Kent K.*, 210 Ariz. 279, ¶ 41, 110 P.3d at 1022 (preponderance standard applies to best interests). Valeria cites no authority requiring the court to consider the adequacy of reunification services or give special weight to Maria’s potential relationship with Christopher when weighing best interests. Benefits of termination may include a current adoption plan or even evidence that a child is adoptable, *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004), and the court may consider evidence that a child’s present placement is meeting the child’s needs, *In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 107, 876 P.2d 1137, 1142 (1994).

¶41 Reasonable evidence at the termination hearing supported the juvenile court’s finding that Maria’s foster parents were providing for her special needs in a “nurturing, loving and stable home” and wished to adopt her. There was also evidence that Maria, who had spent twenty-four of the previous thirty-three months in their care, had bonded with the foster family and was “thriving” in their care. We find no error in the court’s finding that termination of Valeria’s parental rights was in Maria’s best interests.

### Conclusion

¶42 As noted at the outset, we find this a close and troubling case. In such a situation, we will accord much deference to the juvenile court because of its superior opportunity “to assess the credibility, attitude and condition” of the parties and witnesses. *In re Pima County Juv. Action No. S-1607*, 147 Ariz. 237, 239, 709 P.2d 871, 873 (1985); *see also In re Pima County Juv. Action No. S-139*, 27 Ariz. App. 424, 427, 555 P.2d 892, 895 (1976) (same, assessment of witnesses). Valeria has presented no claim on appeal that warrants reversal of the juvenile court’s order terminating her parental rights to Maria. We therefore affirm the order.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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GARYE L. VÁSQUEZ, Judge

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JOSEPH W. HOWARD, Judge